RECENT IMPORTANT DECISIONS

AGENCY—RATIFICATION—ACTION BY PRINCIPAL BASED ON HIS OWN RATIFICATION.—Plaintiff company sued upon a contract alleged to have been made to supply defendant company with goods. The contract was signed for the plaintiff by an agent who had no authority for that purpose. One of the terms of the contract was that it "shall only be considered binding on the seller when signed by one or more of its officers." This contract was not so signed, but plaintiff relied upon its own subsequent ratification to validate it. *Held,* that even if it could be ratified by the principal so as to give the principal a cause of action upon it, it must be ratified as made, and that this therefore only made more binding the requirement that, in order to be operative, the contract must be signed by one or more of the officers. The action consequently could not be maintained: *Atlanta Buggy Co.* v. *Hess Spring & Axle Co.* (1905), — Ga. —, 52 S. E. Rep. 613.

The court discussed at some length the question (considered in a recent article on "The Effect of Ratification as Between the Principal and the Other Party," 4 MICHIGAN LAW REVIEW, 269) of the right of a principal to found a claim to affirmative relief upon his own ratification of an unauthorized contract, with evident leanings in favor of that right, citing a number of Georgia cases, no one of which, however, involves that precise question. So far as can be determined from the opinion itself most of the important cases upon the subject were not brought to the attention of the court. As to the point upon which the case went off, there may well be difference of opinion. The requirement of signing by an officer was evidently intended for the plaintiff's benefit, and if it saw fit to waive that requirement, it is difficult to see why the defendant could complain, or escape the operation of the contract.

BAILMENTS—NEGLIGENCE OF BAILOR AND BAILEE.—Plaintiff, when about to try on a vest in a clothing store, laid aside his old vest, as directed by the salesman. The vest, containing a watch, chain, and charm, was stolen. In an action to recover the value of the latter, *Held,* that "the express invitation to the plaintiff to remove his vest fairly embraced an invitation to leave in it the watch, chain, and charm which he was wearing; they not being of exceptional or unusual value," and that the shop-keeper was bound to exercise due care in guarding them against theft. *Wamser* v. *Browning, King and Company* (1905), 95 N. Y. Supp. 1051.

The decision in this case is based on *Bunnell* v. *Stern,* 122 N. Y. 539, 25 N. E. 910, 10 L. R. A. 481, 19 Am. St. Rep. 519, but carries the liability of the clothing-merchant a step farther than did the latter case, which was merely for the recovery of the value of the garment necessarily laid off for the purpose of trying on another. In Pennsylvania, however, cases have arisen upon conditions substantially similar to those of the principal case. Thus in *McCollin* v. *Reed,* 16 Wkly Notes Cas. 287, plaintiff recovered the value of his watch, stolen from a dressing-room where he had left it while having clothing fitted, and in *Woodruff* v. *Painter,* 150 Pa. St. 91, 24 Atl. 621, 30 Am. St. Rep. 786, 16 L. R. A. 451, the clothier was held to be a bailee

for hire of a watch which the owner, upon the advice of a salesman, had placed in a designated drawer. The latter case probably overrules or modifies the earlier case of *Goff* v. *Wanamaker*, 25 Wkly Notes Cas. 358, in which plaintiff was not permitted to recover $275 stolen from his vest, which had been placed upon a counter at the salesman's direction. But in *Rea* v. *Simmons*, 141 Mass. 561, where the customer's pocket-book and other belongings were stolen from a dressing-room where he had left his clothing at the salesman's request, judgment was rendered for defendant. The merchant's liability, in cases where he is held liable, seems to be that of a bailee for hire, the hire being his chance of profit from the transaction, *Woodruff* v. *Painter*, supra. It is therefore a mutual benefit bailment and requires ordinary diligence on the part of the bailee, STORY ON BAILMENTS (6th Ed.) § 23. No other cases have been found which involve the same state of facts, but the following have a general bearing upon the matter of bailments accomplished as incidents to the carrying-on of certain businesses. A barber is liable for the theft of a hat placed by a customer upon a hat-rack in the shop, *Dilberto* v. *Harris*, 95 Ga. 571, 23 S. E. 112; but not for the loss of an overcoat hung up by the owner on a peg when the proprietor had provided a closet for customers' wraps, *Trowbridge* v. *Schriever*, 5 Daly 11. A bathing-house manager is bound to exercise due diligence in caring for patrons' effects. *Levy* v. *Appleby*, 1 City Ct. R. 252; *Bird* v. *Everard*, 23 N. Y. Supp. 1008; so, too, the keeper of a restaurant; *Simpson* v. *Rourke*, 34 N. Y. Supp. 11; *Buttman* v. *Dennett*, 30 N. Y. Supp. 247; but see *Carpenter* v. *Taylor*, 1 Hilt. 193. A theater proprietor is not liable, however, for the loss of an overcoat left on a hook in a theater box, *Pattison* v. *Hammerstein*, 39 N. Y. Supp. 1039. Nor is a merchant responsible for a customer's pocketbook which disappeared from a counter in his store, no one connected with the store having seen same, *Powers* v. *O'Neill*, 34 N. Y. Supp. 1007. After the fact of the bailment has been established it rests with the plaintiff to show by a preponderance of evidence that defendant was negligent. GODDARD'S OUTLINES, BAILMENTS AND CARRIERS, § 17, and cases there cited.

BILLS AND NOTES—DESIGNATION OF AMOUNT—MARGINAL FIGURES.—The amount of a note was left blank in the body of the note, but was stated both in figures and in writing in the upper margin. In an action thereon by the payee, *Held*, such an instrument is not a promissory note upon which there may be a recovery. *Chestnut* v. *Chestnut* (1905), — Va. —, 52 S. E. Rep. 348.

This holding seems to be in accordance with the weight of authority. *Hollen* v. *Davis*, 59 Ia. 444; *Smith* v. *Smith*, 1 R. I. 398; DANIEL NEGOT. INSTR., §§ 86, 86a. In *Strickland* v. *Holbrooke*, 75 Cal. 268, the contrary view is taken upon the theory that it is immaterial whether the amount follows or precedes the words of promise. In the other cases the view seems to be that the marginal figures are not a part of the instrument itself but are intended merely as aids to remove ambiguities. *Bank* v. *Hyde*, 13 Conn. 279; *Garrard* v. *Lewis*, 10 Q. B. Div. 30; *Hollen* v. *Davis*, supra; *Merritt* v. *Boyden*, 191 Ill. 136; *Prim* v. *Hammel*, 134 Ala. 652. The sum in the margin is generally considered the limit of the amount with which a bona-fide holder may fill up the blank, *Bank* v. *Hyde*, supra; and when completed such a bona-